



Office of the Attorney General

State of Texas

April 5, 1993

DAN MORALES

ATTORNEY GENERAL

Ms. Julie Pachares
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR93-171

Dear Ms. Pachares:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19058.

The City of Midland (the "city") has received an open records request for two investigative files held by the Midland Police Department (the "department"). Specifically the requestor seeks the "complete police report of Gerald Benjamin Kelly" and the "complete police report of Curtis Dean Purser." You state that "a separate agency effectuated the arrests of Mr. Kelly and Mr. Purser" and that you have submitted for our review "[e]verything the city has in its file." A governmental body is not required to obtain information in the possession of another entity so long as the other entity is not holding the information on the governmental body's behalf. Open Records Decision No. 534 (1989) at 2-3. You claim the information is excepted by sections 3(a)(3) and 3(a)(8) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 3(a)(3). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You inform us that Mr. Kelly has pled guilty, and that his codefendant, Mr. Purser, is still awaiting trial. You assert that release of any information concerning Mr. Kelly would damage the state's position in the pending prosecution against Mr. Purser. On this basis, we conclude that you have demonstrated that the requested information relates to pending litigation and is therefore excepted from disclosure under section 3(a)(3) of the Open Records Act.¹

We note, however, that the courts have ruled in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), that certain factual information generally found on the first page of offense reports is public information and may not be withheld under section 3(a)(8). This office has concluded that information of the type generally found on the front page of an offense report may not be withheld under section 3(a)(3), Open Records Decision No. 597 (1991), and you must therefore release any such information. This information includes the arrestees' social security number, name, alias, race, sex, age, occupation, address, police department identification number, and physical condition; the name of the arresting officer; the date and time of the arrest; the offense committed; the location of the crime; the premises involved; the time of the occurrence; and the names of investigating officers.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-171.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/mc

Ref.: ID# 19058

cc: Mr. Michael Kashgarian
Midland Reporter-Telegram
Staff Writer
201 East Illinois Ave.
Midland, Texas 79701
(w/o enclosures)

¹As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(8) at this time.